LIBRARY
SUPREME COURT, U.S.

Office-Supreme Court, U. S.
FILED
DEC 3 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION OF THE STATE OF MISSISSIPPI,
Appellee

REPLY BRIEF OF THE APPELLANT

C. E. CLIFTON,
Memphis, Tennessee;
W. H. WATKINS, SR.,
P. H. EAGER, JR.,
T. H. WATKINS,
Jackson, Mississippi,
Attorneys for Appellant.

INDEX

Subject Index

	Page
Reply brief of the appellant	1
The tax objected to is one in the last analysis upon the privilege of receiving in the State of Mississippi and transporting to the State of Tennessee for processing commodities and returning the same to the owners thereof	3
Appendix I	11
Appendix II	11

Table of Cases Cited

Best & Co. v. *Maxwell*, 311 U. S. 454, 85 L. Ed. 275	3
Caskey Baking Company v. *Virginia*, 313 U. S. 117, 85 L. Ed. 1222	5
Charles P. Cook v. *County of Marshall*, 196 U. S. 261, 49 L. Ed. 471	7
Crenshaw v. *Arkansas*, 227 U. S. 389, 57 L. Ed. 365	4
Farmers Irrig. Dist. v. *Nebraska ex rel. O'Shea*, 244 U. S. 325, 37 S. Ct. 630, 61 L. Ed. 1168	9
Hattiesburg Grocery Company v. *Robertson*, 126 Miss. 34, 88 So. 4, Suggestion of Error overruled, 126 Miss. 655, 89 So. 369, 25 A. L. R. 755	9
Jewel Tea Company v. *City of Troy*, 7 Cir. 85 Fed. 2nd 366	2
La Tourette v. *McMaster*, 248 U. S. 465, 39 S. Ct. 330, 63 L. Ed. 362	9
New York ex rel. New York & Q. Gas Co. v. *McCall*, 245 U. S. 345, 38 S. Ct. 122, 62 L. Ed. 337	9
Nippert v. *City of Richmond*, 327 U. S. 416, 90 L. Ed. 760	3
Nobles v. *Georgia*, 168 U. S. 398, 18 S. Ct. 87, 42 L. Ed. 515	9
Northern P. R. Co. v. *Meese*, 239 U. S. 642, 36 S. Ct. 223, 60 L. Ed. 467	9
Southwestern Oil Company v. *The State of Texas*, 217 U. S. 114, 54 L. Ed. 688	6

Page

St. Louis, I. M. & S. R. Co. v. *Paul*, 173 U. S. 404, 19 S. Ct. 419, 43 L. Ed. 746 9

Supreme Lodge, K. P. v. *Eiser*, 265 U. S. 41, 44 S. Ct. 436, 68 L. Ed. 891 9

Supreme Lodge, K. P. v. *Meyer*, 265 U. S. 30, 44 S. Ct. 432, 68 L. Ed. 885 9

Vigliotti v. *Pennsylvania*, 258 U. S. 403, 42 S. Ct. 330, 66 La. Ed. 686 9

Waters-Pierce Oil Co. v. *Texas*, 177 U. S. 28, 20 S. Ct. 518, 44 L. Ed. 657 9

Winchester v. *Winchester Waterworks Co.*, 251 U. S. 192, 40 S. Ct. 123, 64 L. Ed. 221 9

STATUTES CITED

Chapter 137 Mississippi Laws of 1944 8

Chapter 138, Mississippi Laws of 1944 8

Chapter 689, Mississippi 1942 Code 9

Fourteenth Amendment 6

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 253

MEMPHIS STEAM LAUNDRY CLEANER, INC.,
Appellant,

vs.

A. H. STONE, CHAIRMAN, STATE TAX COMMISSION, STATE OF MISSISSIPPI,
Appellee

REPLY BRIEF OF THE APPELLANT

The statement of facts in brief of counsel for the appellee demonstrates that the appellant's transactions were in interstate commerce.

It is true that appellant's servants came into the State of Mississippi and picked up commodities to be processed out of the state. It must be borne in mind, however, that the appellant's agents operating trucks came into the State of Mississippi at the solicitation of persons in Mississippi desiring the appellant's service and such commodities as were delivered to them were for the express purpose of being transported to Memphis in the State of Tennessee, there processed and returned to the State of Mississippi; that such transactions constitute commerce is not subject to question.

Counsel for appellee cites no case from this court. To the contrary, cites the case of *Jewel Tea Company* v. *City of Troy*, 7 Cir. 85 Fed. 2nd 366. In that case the driver of the truck was delivering merchandise to various persons pursuant to orders previously taken, but as the court pointed out the act was not a revenue measure, but one for the purpose of meeting the expense of inspection and regulation of such vehicles, in respect to which the court used the following language:

> "Appellant's main contention is that the ordinance in question, as applied to appellant and its business in Troy, is a revenue raising device, constituting a burden upon interstate commerce, and is not enforceable against appellant. The interstate character of appellant's business is not controverted; nor is it disputed that if the ordinance imposed a fee or tax for revenue purposes it would not be enforceable against appellant. Interstate commerce may not be subjected to the burden of local taxation. Minnesota v. Blasius, 290 U. S. 1, 54 S. Ct. 34, 78 L. Ed. 131. But it is clear that if the fee is designed for the purpose of meeting the expense of such inspection and regulation of vehicles in the interest of the public health, it is not assailable as a burden upon interstate commerce. Standard Stock Food Co. v. Wright, 225 U. S. 540, 32 St. 784, 56 L. Ed. 1197; Atlantic & Pacific Tel. Co. v. City of Philadelphia, 190 U. S. 160, 166, 23 S. Ct. 817, 47 L. Ed. 995. We are here, therefore, concerned mainly, if not entirely, with the scope an effect of this particular ordinance, and the purpose for which the license fee is imposed."

It is conceded in this case that the tax is one for raising general revenue. The Act is found in the General Privilege Tax Act of the State of Mississippi, made Appendix one to appellant's brief at page 33.

The tax here involved is not for the purpose of inspection or for the use of the highways. It is not a regulatory tax.

The tax is not imposed in the exercise of the police power of the State for the protection of the health, well being or morals of the people, and neither is the tax one in lieu of an ad valorem tax, all of which we have pointed out in our original brief. Upon the other hand, the appellant pays a tax to the Motor Vehicle Commissioner for the upkeep of the highways. Under paragraph 23, Section 9353 there is found the definition of a private commercial carrier of property by motor vehicle. A copy of the Section is hereto attached as Appendix I. The appellant, in the operation of its trucks, falls within the definition of a private carrier. Under paragraph 5, Section 9354, a tax is imposed upon the appellant and it is required to pay the tax as a private carrier of property. A copy of said Section 9354, paragraph 5 is attached hereto as Appendix II. This tax is equally applicable to residents of the state. The tax involved in this case is in the last analysis, placed upon the appellant because in response to the solicitation of people in Mississippi it exercises the privilege of receiving in the State of Mississippi and transporting to the State of Tennessee for processing, cloth[illegible] and returning the same to the owners thereof in Mississippi, which activity constitutes interstate commerce.

The Tax Objected to Is One in the Last Analysis upon the Privilege of Receiving in the State of Mississippi and Transporting to the State of Tennessee for Processing Commodities and Returning the Same to the Owners Thereof.

The situation may not be distinguished from that of *Nippert* v. *City of Richmond*, 327 U. S. 416, 90 L. Ed. 760 where persons solicited orders for merchandise to be shipped from out of the state, or from the case of *Best & Co.* v. *Maxwell*, 311 U. S. 454, 85 L. Ed. 275, where a New York

retail merchant displayed samples in a hotel room in North Carolina, taking orders therefor to be shipped direct to the customer from New York City. In each case the court held that the tax was a burden upon interstate commerce and unenforceable.

Counsel lays some emphasis upon the fact that the appellant's agent solicited the service in the State of Mississippi. Nevertheless the solicitation was for the purpose of obtaining commodities to be transported to the State of Tennessee for servicing and return.

A burden may not be imposed upon the appellant engaged in interstate commerce by designating the tax as peddling or the occupation that of a transient vendor.

The court disposed of such contention in the case of *Crenshaw* v. *Arkansas*, 227 U. S. 389, 57 L. Ed. 365 wherein in pursuance of orders previously taken the company's agent went into the State of Arkansas delivering the commodities purchased. The Supreme Court of Arkansas held that such constituted peddling; in which respect the court said:

> "We must look, however, to the substance of things, not the names by which they are labeled, particularly in dealing with rights created and conserved by the Federal Constitution in the decisions of this court. At common law and under the statutes which have been sustained concerning peddlers, they are such as travel from place to place, selling the goods carried about with them; not such as to take orders for the delivery of goods to be shipped in the course of commerce. Here, as the facts show, the sample ranges carried about from place to place were not sold. Orders are taken and transmitted to the manufacturer in another state for ranges to be delivered in fulfillment of such orders, which are in fact shipped in interstate commerce and delivered to the persons who ordered them. Business of this character, as well settled by the deci-

sions of this Court, constitutes interstate commerce, and the privilege of doing it cannot be taxed by the state."

Appellee's counsel, however, does not seriously question that the transactions in which appellant is engaged are other than in interstate commerce and devotes a greater portion of his brief to the question of classification. Where an occupation is in interstate commerce, as appears from the authorities we have cited in our original brief the same is not subject to a privilege tax, where the tax is one purely for revenue as in the present instance. It is considered that in this case the tax is for revenue only.

Counsel spends a greater portion of his brief in discussion of the case of *Caskey Baking Company* v. *Virginia*, 313 U. S. 117, 85 L. Ed. 1222. No question of interstate commerce was involved in that case whatsoever. Upon the other hand, a non-resident of the State of Virginia, by truck, transported bread into the State of Virginia and sold it direct to persons in the state desiring to purchase the same. There was no element of interstate commerce. The occupation was that of peddling or transient vendor. The taxpayer complained, however, because manufacturers in the State of Virginia paying tax on their capital employed in the state were exempt therefrom.

Since the tax was not on interstate commerce, but a local tax on peddlers, the question of classification was very relevant. This court, however, made it very clear that persons engaged in the same business as the appellant in the State of Virginia, was subject to the tax. The court used the following language:

". . . But the argument overlooks the fact that peddlers resident in Virginia who buy their goods within the State or buy or procure them from extra-state sources, are alike subject to the Act. The con-

tention that the Act discriminates against interstate commerce by virtue of the exemption in question is negatived by our decisions."

Coming to the question of the violation of the Fourteenth Amendment by reason of the fact that a person soliciting for a laundry within the state need only pay a tax of $8.00 on each truck, whereas upon a non-resident person the tax is $50.00 per truck.

Counsel is unable to cite any case justifying a classification based upon the difference between the resident of the state and a non-resident of the state.

We presented such authorities in our original brief, beginning on page 30.

There is no contention that the tax collected was in lieu of an ad valorem tax. If the appellant had owned property in the State of Mississippi upon the first day of January of any year the same would have been subject to ad valorem taxes and at the same time it would have been required to pay the discriminatory privilege tax complained of in this case.

At page 39 of our original brief we copied Section 9784, Mississippi 1942 Code, from which it appears that if the appellant had owned property in the State on the first day of January of any year, such property would have been subject to an ad valorem tax and the fact that it paid a privilege tax would not have relieved it from liability therefor.

Appellee's counsel cites the case of *Southwestern Oil Company* v. *The State of Texas*, 217 U. S. 114, 54 L. Ed. 698. In that case the appellant was a wholesale dealer in oil in the State of Texas. It complained that wholesale dealers in other commodities were taxed upon a different basis. This court held that the classification was not arbitrary

and no discrimination was had. There was no question of interstate commerce involved in the case.

In the case of *Charles P. Cook* v. *County of Marshall*, 196 U. S. 261, 49 L. Ed. 471, the court held that the difference between a wholesale dealer and a retail dealer in cigarettes was a sufficient basis for classification and was not arbitrary. No question of interstate commerce was involved in that case.

Counsel for the appellee, at page 23 of his brief, used the following language:

> "It will also be noted that the language of the subsection imposing the tax on the solicitor for a laundry, limits the application of the tax to soliciting business 'for a laundry not licensed in this state as such'. And the construction of said subsection in connection with the provisions of Section 110, Chapter 137, Laws of 1944 has uniformly been that where a non-resident operator of a laundry or cleaner establishes an office or 'receiving station' within the state, and pays the local laundry license according to the graduated tax imposed in accordance with the size of the municipality in which such office or receiving station is operated, that such nonresident owner of such place of business would not be required to pay the $52.00 on each truck imposed on solicitors of laundry and cleaning for laundries not licensed in the state, and would only be required to pay the tax of $8.00 for each municipality in which the cleaning and laundrying was solicited, other than the one in which the laundry was licensed."

In this case the Supreme Court of the State of Mississippi has decided that the appellant, under the facts stated, was liable for the privilege tax provided under paragraphs (t) and (y), Section 45, Chapter 138, Mississippi Laws of 1944. Counsel cites no authority for a statement that if the appellant had established a laundry office or receiving station in the state it would not have been liable for the tax of

$50.00 per truck. But be that as it may, the appellant had the right to conduct its business as it saw fit in interstate commerce without establishing a receiving station in the State of Mississippi and its failure to do so, did not justify the tax imposed in this case.

Counsel called attention to the fact that the taxes imposed by Chapter 137 Mississippi Laws of 1944 are payable to the counties and municipalities; that the tax provided in Chapter 138, Mississippi Laws of 1944 are state wide taxes and are payable through the State Tax Commission. It is very true as shown in this record that the tax of $50.00 per truck required of the appellant was payable to the State Tax Commission and the State Tax Commission of course, was required to pay the money into the State Treasury. It is true that the tax under Chapter 137, Section 110, Laws of Mississippi, 1944 was payable to the county and municipality, but no difference could be predicated thereupon. In each instance the tax was provided by an enactment of the legislature of the State of Mississippi. The fact that in one instance the tax went to the State of Mississippi through the State Tax Commission and in the other instance to the county or municipality through local tax collectors would be without relevancy in this case. Under Section 110, Chapter 137, Mississippi Laws of 1944, a domestic company might solicit laundry from any point in the state for $8.00 per truck, whereas under Section 45, Chapter 138, Mississippi laws of 1944, $50.00 per truck, was imposed upon a non-resident. The fact that one tax is called a state wide tax and the other a local tax in no manner relieves the discrimination or justifies the imposition of a tax on interstate commerce. Each chapter originates with the legislature of the State of Mississippi and are equally binding.

At page 24 of appellee's brief, the position is taken that the tax was only imposed upon the individual operating

the truck. It would have been very relevant for appellee's counsel to have presented that view to the Supreme Court of the State of Mississippi, however, that court held in the instant case that the appellant, a corporation, engaged in the business described through its employees, was subject to the tax. It is well settled that the construction given to a state statute by the highest judicial tribunal of such state is binding upon this court.

Waters-Pierce Oil Co. v. *Texas*, 177 U. S. 28, 20 S. Ct. 518, 44 L. Ed. 657; *Nobles* v. *Georgia*, 168 U. S. 398, 18 S. Ct. 87, 42 L. Ed. 515; *St. Louis, I. M. & S. R. Co.* v. *Paul*, 173 U. S. 404, 19 S. Ct. 419, 43 L. Ed. 746; *Northern P. R. Co.* v. *Meese*, 239 U. S. 642, 36 S. Ct. 223, 60 L. Ed. 467; *Winchester* v. *Winchester Waterworks Co.*, 251 U. S. 192, 40 S. Ct. 123, 64 L. Ed. 221; *Farmers Irrig. Dist.* v. *Nebraska ex rel. O'Shea*, 244 U. S. 325, 37 S. Ct. 630, 61 L. Ed. 1168; *New York ex rel. New York & Q. Gas Co.* v. *McCall*, 245 U. S. 345, 38 S. Ct. 122, 62 L. Ed. 337; *La Tourette* v. *McMaster*, 248 U. S. 465, 39 S. Ct. 330, 63 L. Ed. 362; *Vigliotti* v. *Pennsylvania*, 258 U. S. 403, 42 S. Ct. 330, 66 La. Ed. 686; *Supreme Lodge, K. P.* v. *Meyer*, 265 U. S. 30, 44 S. Ct. 432, 68 L. Ed. 885; *Supreme Lodge, K. P.* v. *Eiser*, 265 U. S. 41, 44 S. Ct. 436, 68 L. Ed. 891.

Chapter 689, Mississippi 1942 Code, holds that the word persons includes artificial as well as natural persons. The statute contains the following language:

> "Person.—The term 'person', when used in any statute, shall apply to artificial as well as natural persons;"

In the case of *Hattiesburg Grocery Company* v. *Robertson*, 126 Miss. 34, 88 So. 4, Suggestion of Error overruled 126 Miss. 655, 89 So. 369, 25 A. L. R. 755, Writ of error dismissed, 260 U. S. 710, 67 L. Ed. 475, it is held that an income tax imposed upon persons included corporations.

We respectfully submit that (1) the appellant was engaged in interstate commerce and the tax complained of violates the interstate commerce clause of the Constitution of the United States. (2) Since the resident of a state could perform the same services by paying a tax of $8.00 per truck a tax of $50.00 merely because the appellant is a non-resident of the State of Mississippi, is discriminatory and rests upon no reasonable basis, and violates the Fourteenth Amendment to the Constitution of the United States.

We present to the court that the judgment of the court below should be reversed.

C. E. Clifton,
Memphis, Tennessee;

W. H. Watkins, Sr.,
P. H. Eager, Jr.,
T. H. Watkins,
Jackson, Mississippi,
Attorneys for Appellant.

APPENDIX I

"(23) Private commercial carrier of property by motor vehicle.—Any person not included in the terms 'common Carrier by motor vehicle' or 'contract carrier by motor vehicle' who or which transports in interstate or intrastate commerce on the public highways of this state by motor vehicle property of which such person is the owner, lessee or bailee, other than for hire, when such transportation is for the purpose of sale, lease, rent or bailment, or in furtherance of any commercial enterprise or distinguished from use of a motor vehicle for transporting produce, not for hire and by the producer thereof, from forest, field or stream to primary markets. Not including, however, taxicabs, passenger busses and drays, operating wholly within the corporate limits of a municipality in this state, or not exceeding four miles beyond the corporate limits of said municipality, and hearses, ambulances, school busses as such, and all motor vehicles defined in sub-section 30."

APPENDIX II

PRIVATE CARRIERS OF PROPERTY

5. On each "private commercial carrier of property" and on each operator of a "dray" as heretofore defined, for each motor vehicle there is hereby levied a tax, according to the following schedule:

For ½ ton carrying capacity and less than ½ ton per annum	$ 12.00
For more than ½ ton, but not more than 1 ton carrying capacity, per annum	15.00
For more than 1 ton, but not more than 1½ tons carrying capacity, per annum	18.00
For more than 1½ tons, but not more than 2 tons carrying capacity, per annum	30.00
For more than 2 tons, but not more than 2½ tons carrying capacity, per annum	48.00

For more than 2½ tons, but not more than 3 tons carrying capacity, per annum	60.00
For more than 3 tons, but not more than 3½ tons carrying capacity, per annum	72.00
For more than 3½ tons, but not more than 4 tons carrying capacity, per annum	84.00
For more than 4 tons, but not more than 4½ tons carrying capacity, per annum	108.00
For more than 4½ tons, but not more than 5 tons carrying capacity, per annum	132.00
For more than 5 tons, but not more than 6 tons carrying capacity, per annum	186.00
For more than 6 tons, but not more than 7 tons carrying capacity, per annum	252.00
For more than 7 tons, but not more than 8 tons carrying capacity, per annum	294.00
For more than 8 tons, but not more than 9 tons carrying capacity, per annum	384.00
For more than 9 tons, but not more than 10 tons carrying capacity, per annum	498.00